

With the three additional days for mailing provided by §1.4(h), the Triad Opposition was due not later than March 29. Hence it should be stricken as late-filed.

Reply to Opposition

If the Chief, Audio Services Division should elect to not strike Triad's Opposition, Radio replies to it as follows:

Triad urges that Radio's Petition is procedurally defective in that §1.106(a)(1) of the rules permits reconsideration of an HDO only if it precludes petitioner's participation in the proceeding, and, Triad contends, the HDO does not prevent Radio from a role in this case.

This argument is but to put form over substance. When the owner of the site proposed by Radio raised his price outrageously (\$14,400 per year, payable in advance, no refunds, must be agreed to within 5 days), he effectively deprived Radio of its previously assured site. Confronted with this loss of site, Radio filed an amendment specifying a new site. This amendment was rejected by the HDO. So, for all practical purposes, Radio was without a site. Lacking a site, an applicant cannot realistically be expected to proceed with participation in a comparative hearing. For Triad to contend that Radio remains a participant in this proceeding is but sophistry.

The cases cited by Triad Son Broadcasting Co. Inc., 50 RR 2d 759, 761, n.16 (1981); WIOO, Inc., 42 RR 2d 1356, 1357 (1978); Federal Broadcasting Systems, Inc., 38 RR 2d 692, 696 (1976) and New South Radio Inc., 36 RR 2d 621, 622 (1976) all stand for the

Triad further contends that because Radio's principal did not have a dollars-and-cents-rent-per-month contract with the owner of its original site, it had no "reasonable assurance" of use of the site.<sup>2</sup> Triad could not be further wrong. Its contention is negated by the fact that Swicegood wrote to Baker in mid-December, 1992, not proposing an agreement, but supplementing and confirming a previous agreement to use the WKXR tower.

Additionally, Radio director Vernon Baker's November 16, 1991 letter to WKXR owner Swicegood (Exhibit B) confirms that there indeed was a meeting of the minds. If there were not, why did ~~Swicegood wait more than a year to write Baker a letter which did~~

agreed to let Radio put its public file at WKXR. Exhibit D includes the Notice of Filing of Radio's application as published, and reporting that its public file would be maintained at 1115 Eastview Drive, Asheboro (the same address of Swicegood-WKXR shown on Exhibit C). Exhibit E is a reproduction of a page from the Broadcasting Yearbook 1991, confirming that the Eastview address is in fact that of Swicegood-WKXR.

The contention of Triad that Radio would have its consulting engineer prepare the technical portions of its application, then seek assurance for use of the site specified is preposterous and absurd. It should have been obvious to Triad that Baker's letter of November 16, 1991 (Exhibit B) was not the first contact between him and Swicegood, and but amplified a previous conversation when Swicegood provided reasonable assurance to Baker that Radio might locate its antenna on one of the WKXR towers. The agreement to allow the Radio public file to remain at WKXR further confirms the amicable relationship between Baker and Swicegood, a relationship that continued until Swicegood was persuaded to set his tower-use price so high and the terms so objectionable that Radio would be forced to seek another site.

Triad's final contention, that Radio's amendment is technically deficient, is equally meritless. The only discrepancy in Radio's engineering was that the tower site designated on the topo map (Figure 1) was 03 seconds from the coordinates of the WZ00 tower proposed for use by Radio in its amendment rejected by the

HDO.<sup>3</sup> The coordinates specified in Radio's amendment are those of WZOO; the contours depicted in Radio's engineering Figures 5 and 6 are correct as are the tabulation of distance to the amended contours (Figure 4).

The site designated on Radio's topo map was 9 feet lower AMSL than the site of WZOO towers (03 seconds to the west), so Radio has filed a correction to its pending amendment, reducing tower height by 9 feet and confirming that contours and distances thereto are unchanged.

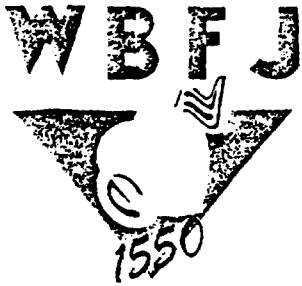
With respect to Triad's contention that Radio had failed to respond to Section 73.316(c) and (g) of the rules, the Commission should note that Radio and Triad have proposed the identical directional antennas, Centec JLCP-4DA, and that both applicants have provided the same relative field pattern plots and directional antenna tabulation data (Radio: Fig. 3; Triad: Exhibit C).<sup>4</sup> Radio has neglected to provide in its amendment no significant or necessary data.

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<sup>3</sup> Triad seeks to amplify all out of proportion the 3 seconds.

### Conclusion

Triad's Opposition should be stricken as in violation of Commission filing-date rules; contingently, Radio's Petition for Reconsideration of that portion of the HDO relating to Radio's amendment should be granted. The HDO effectively removes Radio from this proceeding and the ruling sought by Radio complies fully with the intent and purpose of §106(i) of the rules. The objections of Triad are without substance, and as pointed out by the Bureau in this proceeding ". . .no applicant has a vested interest in the disqualification of a competing applicant. Azalea



THE STATION THAT CARES FOR YOU!

1249 Trade Street • Winston-Salem, NC • 27101 • Office Phone 721-1560 • Request Line 777-1550

MUSIC FROM THE HEART

January 31, 1991

Triad Family Network, Inc.  
1249 Trade Street  
Winston-Salem, NC 27101

Gentlemen:

This letter is to confirm that Philip T. Watson and Jean B. Watson, positive control owners of Word of Life Broadcasting, Inc, intends to make available the tower space of WB FJ (AM) to Triad Family Network, Incorporated for the mounting of it's proposed 4-bay FM antenna at the 38 meter level. Enclosed please find a copy of our North Carolina General Warranty Deed confirming our ownership.

An appropriate lease or other instrument securing this agreement will be negotiated and concluded at the grant of the Triad Family Network application.

Should there be inquiry please communicate directly with the undersigned.

Very Truly Yours,

A handwritten signature in dark ink, appearing to read 'P. T. Watson'.

Philip T. Watson

11-16-91

Mr. Edward F. Swicegood, Jr., WKXR-am  
1115 Eastview Drive  
Ashboro, NC. 27203

Dear Edward, Eddie,

Thanks for talking to me today by phone concerning the use of WKXR-am's north tower for a possible new FM station in the Educational Band.

The name of our non profit Co is Positive Alternative Radio Inc. a NC. non profit corp. me, my wife and son are the directors. Our son's name is Eddie or Edward. He manages the paging business.

I gathered from you that we have reasonable assurance that the north tower of WKXR would be available. We would be responsible for all cost regarding the DA antenna adjustment if necessary and installing 1500wps etc.

You mention that your Co. could <sup>possibly</sup> act as agent for the new station for possibilities!

We discussed how radio briefly! Mr Chris Tinsley of Booth, Kretz & Tinsley has represented our FCC interest for many years. He is Counsel for APRL. #35E Thanks  
Vern Baker ex 441111



VERNON H. BAKER

registered professional engineer

P.O. BOX 888, BLACKSBURG, VIRGINIA 24063

3-12-93

12-11-91

1-919-625-2187

Mr Edward F. Swicegood III, JR. 56M  
Radio Station W KXR  
1115 Eastview Dr  
Asheboro, N.C. 27203

Dear Mr Swicegood,

Attached is a copy of the FM application  
we discussed. An ad will be placed in the  
local paper giving notice of filing the application.  
If your secretary could keep this application  
in a folder so that anyone who wanted  
to look at it during normal business hours  
this would be greatly appreciated.

Sincerely yours,

P.S. The Chamber of  
Commerce sent me  
a phone book!  
Thanks

Vernon H. Baker

NORTH CAROLINA  
RANDOLPH COUNTY

### AFFIDAVIT OF PUBLICATION

Before the undersigned, a Notary Public of said County and State, duly commissioned, qualified, and authorized by law to administer oaths, personally appeared

ROBERT P. GRINDSTAFF

who being first duly sworn, deposes and says, that he (she) is

BUSINESS MANAGER

of The Courier-Tribune, engaged in the publication of a newspaper known as The Courier-Tribune, published, issued, and entered as second class mail in the City of Asheboro, in said County and State; and that he (she) is authorized to make this affidavit and sworn statement; that the notice or other legal advertisement, a true copy of which is attached hereto, was published in The Courier-Tribune on the following dates:

December 16, 23, 30, 1991

#### NOTICE OF FILING

An application was filed November 19, 1991, with the Federal Communications Commission, Washington, D.C. on behalf of Positive Alternative Radio, Inc., seeking authority to construct a new non-commercial educational FM broadcast station at Asheboro, North Carolina.

The applicant is a non-profit corporation consisting of officers and directors: Vernon H. Baker, Virginia A. Baker and Edward A. Baker. The station will have a power of 2.5 kw and antenna height of 15 meters above ground. Antenna and transmitter will be located at the north end of city limits on Oakle Mountain, using the north tower of Station WQOR (AM); studios will be in Asheboro.

A copy of the Positive Alternative Radio, Inc. application and any amendments and associated documents is available for public inspection during regular business hours at 1115 Eastview Drive in Asheboro.  
3/12/16-23-30/91.

WKXR  
Address

and that the said newspaper in which such notice, paper, document, or legal advertisement was published was, at the time of each and every such publication, a newspaper meeting all of the requirements and qualifications of Section 1-597 of the General Statutes of North Carolina, 1943, as amended, and was a qualified newspaper within the meaning of Section 1-597 of the General Statutes of North Carolina.

This 30th day of December, 1991

*[Signature]*

Sworn to and subscribed before me, this 30th day

of December, 1991

*Janice W. Walker*

Notary Public

My commission expires: 6-19-96

air, target date  
8 ft. Box 12369, 20  
8) 374-0898. Krie  
temp. ■ R. Brye

Not on air, target date unknown: 91.7 mhz;  
328 ft. TL: N4358 18W75 54 41. State University  
Albany (12246). State University of New York.  
April 29, 1941: 790 khz; 1 kw-U, DA-N. TL:  
W75 56 54. 134 Mullin St. (13601). (315) 788-  
Communications Corp. Net: CBS, Unistar.  
Format: MOR. Spec prog: Farm 3 hrs wkly.  
Format: MOR. Spec prog: Farm 3 hrs wkly.  
pres: James E. Brett, gen sls mgr;

Walton

1951: 1270 khz

01 32 W73 49 39. Box 551 (10602); Secor Road,  
Hartsdale (10530). (914) 693-2400. High View Broad-  
casting of Westchester Inc. (acq 7-90; \$12.5 million with  
co-located FM; FTR 7-16-90). Net: AP. Rep: Katz. For-  
mat: All news, talk, info. News staff 7; news progmg 46  
hrs wkly. General. ■ Richard White, gen mgr; Otto Miller  
& Brian McKenna, gen sls mgrs; Mark Mitchell, prog dir;  
Sue Richard, mus dir; Paul Adamo, prom mgr; Gene  
Lisansky, news dir; Clark Burgard, chief engr.  
WFAS-FM-Sep 1, 1947: 103.9 mhz; 600 w. Ant 669 ft.

Ahoskie Radio li  
cated FM; FTR 3  
mat: Black, gospi  
gen sls mgr; Rod.  
WQDK(FM)-Co-owned with WRCS(AM). Sep 2, 1968:  
99.3 mhz; 3 kw. Ant 300 ft. TL: N36 16 46 W77 01 59.  
Format: Country. ■ Don Upchurch, opns mgr.

EXHIBIT E

Alhambra

At the request and on the behalf of Word of Life Broadcasting Co, Inc, (WBFJ) and Michael B. Gliner (WPIP), both of Winston-Salem, North Carolina, I have been requested to prepare FCC Form 301 with attending exhibits in support of a minor change application. The purpose of this application is to correct these two AM stations which share a common tower with an FM proposal at Winston-Salem, NC (BPED-910227MD) as to site coordinates.

My qualifications as an electrical engineer are a matter of public record with the Commission.

1. On February 27, 1991 this office tendered an FM application on behalf of the Triad Family Network, Incorporated seeking channel 207C3 at Winston-Salem North Carolina utilising the WBFJ tower. This application was accepted for filing and carries the file number BPED-910227MD. FAA concurrence was also sought and granted on March 10, 1991. A copy of this FAA concurrence appears overleaf.

2. In determining the FM coordinates this office used the best available method under the "hard look" processing guidelines of the FM Branch. A full size reproduction of this map appears in the FM application. The site coordinates obtained were 36-06-33 and 80-14-44. In issuing a Determination of No Hazard the FAA concurs with these coordinates.

3. We called attention to this in the text of BPED-910227MD. This application seeks to conform our more accurate determination of site coordinates to the license of station WBFJ(AM) and to the construction permit of WPIP(AM), file BP-860331A0. Those stations instruments of authorisation indicate coordinates of 36-06-33 and 80-14-47. The difference is 3 seconds of arc.

4. The error in the coordinates corresponds to 0.079 km (about 250 feet) further east for each AM station than is now authorised. This distance is truly de minimis and accordingly no allocation studies have been provided.

5. This application seeks to bring the occupational biohazard statement up to current Commission policy. Each of these stations involved (WPIP and WBFJ) have an individual biohazard distance of 3 meters from the transmitting antenna. Fencing is currently provided beyond this level to the nearest conductor carrying radiofrequency energy.

6. With respect to occupational exposure to the biohazard, an agreement shall be entertained and reduced to writing which will permit the shutoff of all stations using this tower prior to entering the area of biohazard. Furthermore, warning signs, continuing education, OSHA-style lockouts, and interlocks will be provided to protect those who must work inside the biohazard area.

7. It is believed that the RFR biohazard situation is equivalent in scope to the FCC Contingency One in Mimeo 2278 and that during normal operation there would be no possibility of biohazard exposure to workers or the general public. Occupational exposure will be eliminated by the methods in Paragraph 6.

8. FAA clearance has been obtained and appears overleaf.

It is believed that this application is complete and correct in all respects.

**CERTIFICATE OF SERVICE**

I, Margaret A. Ford, Office Manager of the law firm of Booth, Freret & Imlay, do hereby certify that copies of the foregoing MOTION TO STRIKE OPPOSITION TO PETITION FOR RECONSIDERATION AND CONTINGENT REPLY TO OPPOSITION were mailed this 7th day of April, 1993, to the offices of the following:

\*Administrative Law Judge  
Joseph P. Gonzalez  
Federal Communications Commission  
2000 L Street, N. W., Room 221  
Washington, D. C. 20554

\*Norman Goldstein, Esquire  
Hearing Branch, Enforcement Division  
Mass Media Bureau  
Federal Communications Commission  
2025 M Street, N. W., Room 7212  
Washington, D. C. 20554

\*Chief, Data Management Staff  
Audio Services Division  
Mass Media Bureau  
Federal Communications Commission  
1919 M Street, N. W., Room 350  
Washington, D. C. 20554

B. Jay Baraff, Esquire  
Baraff, Koerner, Olender  
& Hochberg, P.C.  
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Washington, D. C. 20015-2003

  
Margaret A. Ford

\* Via Hand Delivery